



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

Memorandum

Date: November 18, 2022

To: Richard Conescu, Chair, & Members, Zoning Board of Adjustment

From: Robert Price, Planning & Zoning Administrator

Subject: **James Gadbois (petitioner/owner)** – Variance under Section 2.02.1.C.2.c of the Zoning Ordinance to permit a detached ADU that is larger than 50% of the size of the Primary Dwelling Unit (PDU). The parcel is located at 85 Patten Road in the R-1 (Residential, by soils) and Aquifer Conservation Districts. Tax Map 6C, Lot 394. Case # ZBA 2022-43.

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

Background & Project Description

Map 6C, Lot 394 is located at 85 Patten Road in the R-1 (Residential, by soils) and Aquifer Conservation Districts. It contains approximately 3.60 acres and is serviced by municipal water (MVD) and a private septic system. The lot is surrounded by residential uses.

The petitioner was granted conditional approval for a detached ADU by the Planning Board on October 18, 2022. The approval was conditioned upon the petitioner obtaining a variance from the Zoning Board of Adjustment from Section 2.02.1.C.2.c of the Zoning Ordinance, which stipulates that a detached ADU shall not exceed 50% of the size of the principal dwelling unit (PDU) or 1,000 square feet in size, whichever is smaller. The Town's Assessing records indicate the petitioner's PDU contains 1,232 s.f. of gross living area, which would permit an ADU of no more than 616 s.f. The petitioner's proposal calls for a detached ADU of approximately 720 s.f., necessitating the variance.

Standard of Review

It is the burden of the petitioner to demonstrate that the five criteria for the granting of the Variance under Section 2.02.1.C.2.c of the Zoning Ordinance to permit a detached ADU that is larger than 50% of the size of the Primary Dwelling Unit (PDU), are met.

As a reminder, for a variance to be legally granted the petitioner must demonstrate that **all five** of the statutory criteria for granting a variance have been met. The statutory criteria, and an explanation of what each criterion is seeking to establish/what the petitioner must prove as part of their response, as prepared by the New Hampshire Office of Planning & Development, is located on the last page of this memo.

Staff Guidance on Potential Motions

Staff cannot make specific recommendations for action to the Zoning Board of Adjustment due to the Board's status as a quasi-judicial body. However, staff suggests the Board use one of the following templates for a motion to grant or deny the variance, depending whichever course of action the Board deems appropriate:

Potential Motion to GRANT the Variance:

"I make a motion that the Board finds the petitioner's responses to the statutory criteria are sufficient, proved each criterion is met, and the Board adopts the petitioner's responses as the Board's findings of fact, and further, to grant the Variance under Section 2.02.1.C.2.c of the Zoning Ordinance to permit a detached ADU that is larger than 50% of the size of the Primary Dwelling Unit (PDU)."

Potential Motion to DENY the Variance:

"I make a motion to deny the Variance under Section 2.02.1.C.2.c of the Zoning Ordinance to permit a detached ADU that is larger than 50% of the size of the Primary Dwelling Unit (PDU), for the following reasons:

- (List the specific reasons why the Board felt the petition failed to meet all five statutory criteria, not just the criteria the Board felt were not met)"***

Ec: James Gadbois, petitioner
Building Department Staff
Fire Prevention Staff
Assessing Department Staff
Cc: Zoning Board File

VARIANCE CRITERIA GUIDELINES

Statutory Requirements (RSA 674:33, I(b)) <i>PETITIONER MUST SATISFY <u>ALL</u> OF THE FOLLOWING</i>	Explanation
1. The variance is not contrary to the public interest.	The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.” As it is in the public’s interest to uphold the spirit of the ordinance, these two criteria are related.
2. The spirit of the ordinance is observed.	
3. Substantial justice is done.	The benefit to the petitioner should not be outweighed by harm to the general public.
4. The values of surrounding properties are not diminished.	Expert testimony on this question is not conclusive, but cannot be ignored. The Board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.
5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways: First is to show that because of special conditions of the property that distinguish it from other properties in the area: (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (b) The proposed use is a reasonable one. <u>Alternatively</u> , unnecessary hardship exists if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.	The petitioner must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area. (a) Determine the purpose of the zoning restriction in question. The petitioner must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a “fair and substantial” way. (b) The petitioner must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. <u>Alternatively</u> , the petitioner can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

Source: NH Office of Planning & Development Zoning Board Handbook, 2021 edition